

76-4-101. Attempt -- Elements of offense.

(1) For purposes of this part, a person is guilty of an attempt to commit a crime if he:

(a) engages in conduct constituting a substantial step toward commission of the crime; and

(b) (i) intends to commit the crime; or

(ii) when causing a particular result is an element of the crime, he acts with an awareness that his conduct is reasonably certain to cause that result.

(2) For purposes of this part, conduct constitutes a substantial step if it strongly corroborates the actor's mental state as defined in Subsection (1)(b).

(3) A defense to the offense of attempt does not arise:

(a) because the offense attempted was actually committed; or

(b) due to factual or legal impossibility if the offense could have been committed if the attendant circumstances had been as the actor believed them to be.

Amended by Chapter 154, 2004 General Session

76-4-102. Attempt -- Classification of offenses.

(1) Criminal attempt to commit:

(a) (i) a capital felony, or a felony punishable by imprisonment for life without parole, is a first degree felony;

(ii) except as provided in Subsection (2), an attempt to commit aggravated murder, Section 76-5-202, which results in serious bodily injury, is punishable by imprisonment for an indeterminate term of not fewer than 15 years and which may be for life;

(b) except as provided in Subsection (1)(c) or (d), a first degree felony is a second degree felony;

(c) any of the following offenses is a first degree felony punishable by imprisonment for an indeterminate term of not fewer than three years and which may be for life:

(i) murder, Subsection 76-5-203(2)(a);

(ii) child kidnapping, Section 76-5-301.1; or

(iii) except as provided in Subsection (1)(d), any of the felonies described in Title 76, Chapter 5, Part 4, Sexual Offenses, that are first degree felonies;

(d) except as provided in Subsection (3), any of the following offenses is a first degree felony, punishable by a term of imprisonment of not less than 15 years and which may be for life:

(i) rape of a child, Section 76-5-402.1;

(ii) object rape of a child, Section 76-5-402.3; or

(iii) sodomy on a child, Section 76-5-403.1;

(e) a second degree felony is a third degree felony;

(f) a third degree felony is a class A misdemeanor;

(g) a class A misdemeanor is a class B misdemeanor;

(h) a class B misdemeanor is a class C misdemeanor; and

(i) a class C misdemeanor is punishable by a penalty not exceeding one half the

penalty for a class C misdemeanor.

(2) If, when imposing a sentence under Subsection (1)(a)(ii), a court finds that a lesser term than the term described in Subsection (1)(a)(ii) is in the interests of justice and the court states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

- (a) 10 years and which may be for life; or
- (b) six years and which may be for life.

(3) If, when imposing a sentence under Subsection (1)(d), a court finds that a lesser term than the term described in Subsection (1)(d) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

- (a) 10 years and which may be for life;
- (b) six years and which may be for life; or
- (c) three years and which may be for life.

Amended by Chapter 93, 2013 General Session

76-4-201. Conspiracy -- Elements of offense.

For purposes of this part a person is guilty of conspiracy when he, intending that conduct constituting a crime be performed, agrees with one or more persons to engage in or cause the performance of the conduct and any one of them commits an overt act in pursuance of the conspiracy, except where the offense is a capital felony, a felony against the person, arson, burglary, or robbery, the overt act is not required for the commission of conspiracy.

Amended by Chapter 209, 2001 General Session

76-4-202. Conspiracy -- Classification of offenses.

Conspiracy to commit:

- (1) a capital felony is a first degree felony;
- (2) a first degree felony is a second degree felony; except that conspiracy to commit child kidnaping, in violation of Section 76-5-301.1 or to commit any of those felonies described in Title 76, Chapter 5, Part 4, which are first degree felonies, is a first degree felony punishable by imprisonment for an indeterminate term of not less than three years and which may be for life;
- (3) a second degree felony is a third degree felony;
- (4) a third degree felony is a class A misdemeanor;
- (5) a class A misdemeanor is a class B misdemeanor;
- (6) a class B misdemeanor is a class C misdemeanor;
- (7) A class C misdemeanor is punishable by a penalty not exceeding one half the penalty for a class C misdemeanor.

Amended by Chapter 40, 1996 General Session

76-4-203. Criminal solicitation -- Elements.

(1) An actor commits criminal solicitation if, with intent that a felony be committed, he solicits, requests, commands, offers to hire, or importunes another person to engage in specific conduct that under the circumstances as the actor believes them to be would be a felony or would cause the other person to be a party to the commission of a felony.

(2) An actor may be convicted under this section only if the solicitation is made under circumstances strongly corroborative of the actor's intent that the offense be committed.

(3) It is not a defense under this section that the person solicited by the actor:

- (a) does not agree to act upon the solicitation;
- (b) does not commit an overt act;
- (c) does not engage in conduct constituting a substantial step toward the commission of any offense;

- (d) is not criminally responsible for the felony solicited;
- (e) was acquitted, was not prosecuted or convicted, or was convicted of a different offense or of a different type or degree of offense; or
- (f) is immune from prosecution.

(4) It is not a defense under this section that the actor:

- (a) belongs to a class of persons that by definition is legally incapable of committing the offense in an individual capacity; or
- (b) fails to communicate with the person he solicits to commit an offense, if the intent of the actor's conduct was to effect the communication.

(5) Nothing in this section prevents an actor who otherwise solicits, requests, commands, encourages, or intentionally aids another person to engage in conduct which constitutes an offense from being prosecuted and convicted as a party to the offense under Section 76-2-202 if the person solicited actually commits the offense.

Amended by Chapter 278, 2013 General Session

76-4-204. Criminal solicitation -- Penalties.

(1) Criminal solicitation to commit:

- (a) a capital felony, or a felony punishable by imprisonment for life without parole, is a first degree felony;
- (b) except as provided in Subsection (1)(c) or (d), a first degree felony is a second degree felony;
- (c) any of the following offenses is a first degree felony punishable by imprisonment for an indeterminate term of not fewer than three years and which may be for life:
 - (i) murder, Subsection 76-5-203(2)(a);
 - (ii) child kidnapping, Section 76-5-301.1; or
 - (iii) except as provided in Subsection (1)(d), any of the felonies described in Title 76, Chapter 5, Part 4, Sexual Offenses, that are first degree felonies;
- (d) except as provided in Subsection (2), any of the following offenses is a first degree felony, punishable by a term of imprisonment of not less than 15 years and which may be for life:

- (i) rape of a child, Section 76-5-402.1;
- (ii) object rape of a child, Section 76-5-402.3; or
- (iii) sodomy on a child, Section 76-5-403.1;
- (e) a second degree felony is a third degree felony; and
- (f) a third degree felony is a class A misdemeanor.

(2) If, when imposing a sentence under Subsection (1)(d), a court finds that a lesser term than the term described in Subsection (1)(d) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

- (a) 10 years and which may be for life;
- (b) six years and which may be for life; or
- (c) three years and which may be for life.

Amended by Chapter 179, 2008 General Session

76-4-301. Specific attempt or conspiracy offense prevails.

Whenever any offense specifically designates or defines an attempt or conspiracy and provides a penalty for the attempt or conspiracy other than provided in this chapter, the specific offense shall prevail over the provisions of this chapter.

Amended by Chapter 20, 1995 General Session

76-4-302. Conviction of inchoate and principal offense or attempt and conspiracy to commit offense prohibited.

No person shall be convicted of both an inchoate and principal offense or of both an attempt to commit an offense and a conspiracy to commit the same offense.

Amended by Chapter 32, 1974 General Session

76-4-401. Enticing a minor -- Elements -- Penalties.

(1) As used in this section:

- (a) "Minor" means a person who is under the age of 18.
- (b) "Text messaging" means a communication in the form of electronic text or one or more electronic images sent by the actor from a telephone, computer, or other electronic communication device to another person's telephone, computer, or other electronic communication device by addressing the communication to the person's telephone number or other electronic communication access code or number.

(2) (a) A person commits enticement of a minor when the person knowingly uses the Internet or text messaging to solicit, seduce, lure, or entice a minor, or to attempt to solicit, seduce, lure, or entice a minor, or another person that the actor believes to be a minor, to engage in any sexual activity which is a violation of state criminal law.

(b) A person commits enticement of a minor when the person knowingly uses the Internet or text messaging to:

- (i) initiate contact with a minor or a person the actor believes to be a minor; and

(ii) subsequently to the action under Subsection (2)(b)(i), by any electronic or written means, solicits, seduces, lures, or entices, or attempts to solicit, seduce, lure, or entice the minor or a person the actor believes to be the minor to engage in any sexual activity which is a violation of state criminal law.

(3) It is not a defense to the crime of enticing a minor under Subsection (2), or an attempt to commit this offense, that a law enforcement officer or an undercover operative who is working with a law enforcement agency was involved in the detection or investigation of the offense.

(4) Enticement of a minor under Subsection (2)(a) or (b) is punishable as follows:

(a) enticement to engage in sexual activity which would be a first degree felony for the actor is a:

(i) second degree felony upon the first conviction for violation of this Subsection (4)(a); and

(ii) first degree felony punishable by imprisonment for an indeterminate term of not fewer than three years and which may be for life, upon a second or any subsequent conviction for a violation of this Subsection (4)(a);

(b) enticement to engage in sexual activity which would be a second degree felony for the actor is a third degree felony;

(c) enticement to engage in sexual activity which would be a third degree felony for the actor is a class A misdemeanor;

(d) enticement to engage in sexual activity which would be a class A misdemeanor for the actor is a class B misdemeanor; and

(e) enticement to engage in sexual activity which would be a class B misdemeanor for the actor is a class C misdemeanor.

(5) (a) When a person who commits a felony violation of this section has been previously convicted of an offense under Subsection (5)(b), the court may not in any way shorten the prison sentence, and the court may not:

(i) grant probation;

(ii) suspend the execution or imposition of the sentence;

(iii) enter a judgment for a lower category of offense; or

(iv) order hospitalization.

(b) The sections referred to in Subsection (5)(a) are:

(i) Section 76-4-401, enticing a minor;

(ii) Section 76-5-301.1, child kidnapping;

(iii) Section 76-5-402, rape;

(iv) Section 76-5-402.1, rape of a child;

(v) Section 76-5-402.2, object rape;

(vi) Section 76-5-402.3, object rape of a child;

(vii) Subsection 76-5-403(2), forcible sodomy;

(viii) Section 76-5-403.1, sodomy on a child;

(ix) Section 76-5-404, forcible sexual abuse;

(x) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child;

(xi) Section 76-5-405, aggravated sexual assault;

(xii) any offense in any other state or federal jurisdiction which constitutes or would constitute a crime in Subsections (5)(b)(i) through (xi); or

(xiii) the attempt, solicitation, or conspiracy to commit any of the offenses in Subsections (5)(b)(i) through (xii).

Amended by Chapter 175, 2013 General Session

Amended by Chapter 278, 2013 General Session